

11/13/2018

JULIA C. DUDLEY, CLERK
BY: *H. Wheeler*
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

ELIZABETH SINES et al.,)	
Plaintiffs,)	Civil Action No. 3:17-cv-00072
)	
v.)	<u>ORDER</u>
)	
JASON KESSLER et al.,)	By: Joel C. Hoppe
Defendants.)	United States Magistrate Judge

This matter is before the Court on Plaintiffs' Motion to Compel Defendants to Permit Inspection and Imaging of Electronic Devices, ECF No. 354, and other discovery matters. On November 9, 2018, the Court held a telephonic hearing at which the parties appeared by counsel and had an opportunity to address these matters. ECF No. 377. The parties largely resolved their differences over Plaintiffs' motion, as well as Plaintiffs' request that certain Defendants sign a consent form allowing Discord to respond to Plaintiffs' subpoena duces tecum. For the reasons stated on the record during the hearing, it is hereby ORDERED that:

1. Plaintiffs' motion to compel, ECF No. 354, is GRANTED. The Court finds that ordering the parties to submit their electronic devices to a third-party vendor for imaging, *see* ECF No. 354-1, is necessary and appropriate to manage discovery in this action. *See Procaps S.A. v. Patheon Inc.*, No. 12-24356-CIV, 2014 WL 800468, at *2-3 (S.D. Fla. Feb. 28, 2014).
2. The parties agreed that certain modifications should be made to the proposed Stipulation and Order for the Imaging, Preservation, and Production of Documents attached to Plaintiffs' motion. ECF No. 354-1. The parties shall promptly submit a new proposed Stipulation and Order that reflects the substance of these agreed-upon terms:

- a. Plaintiffs agree to pay all fees or costs incurred by the third-party vendor in imaging the identified electronic devices. This agreement is made without prejudice to Plaintiffs' ability to seek to recover these expenses at a later date. Defendants are not obligated to pay any fees or costs incurred by the third-party vendor at this time, and they reserve their rights to oppose any request made by Plaintiffs seeking to recover those expenses.
 - b. The Stipulation and Order's terms are reciprocal – they apply equally to Plaintiffs and to Defendants.
 - c. Defendants preserve any properly made objections to Plaintiffs' requests for production.
3. Within seven (7) days from the date of this Order, all Defendants who appeared at the hearing, except Defendant Richard Spencer, shall sign the consent form allowing Discord to produce any discoverable documents or electronically stored information in response to Plaintiffs' subpoena duces tecum.
 - a. Within seven (7) days from the date of this Order, Spencer's counsel shall notify the Court whether or not he objects to the Court entering an Order directing Spencer to sign the Discord consent form.
4. The Court previously allowed counsel to withdraw from representing Defendant Elliot Kline. ECF No. 347. Kline's former counsel shall provide to the Court and Plaintiffs' counsel Kline's contact information, including any address, telephone number, and email address that counsel may possess.

It is so ORDERED.

ENTER: November 13, 2018

A handwritten signature in black ink, reading "Joel C. Hoppe". The signature is written in a cursive, flowing style.

Joel C. Hoppe
U.S. Magistrate Judge